

Help for Families©

Your legal rights in getting help for your disabled child.

November 2018

newlife
THE CHARITY FOR DISABLED CHILDREN

BHTA
British Healthcare Trades Association

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This leaflet has been produced by the Children's Equipment Section of the British Healthcare Trades Association (BHTA) along with Newlife the Charity for Disabled Children to help you understand your legal rights to assistance with the cost of getting the equipment or adaptations your disabled child needs.

Although many people find the law confusing, it is there to help you and your child. This leaflet tells you about your rights in plain English and will help you understand:

- Which laws provide for your rights?
- Who is legally responsible for providing what for your child?
- Who you can go to for help if your child is not receiving what they are legally entitled to?

What does the law say?

There are different laws which make a range of authorities and public bodies (including the NHS, social services and schools) responsible for helping disabled children and their families. These laws still apply to private companies running services on behalf of public bodies – for example NHS services provided in private hospitals.

It is usually your local authority (often called "the Council") who are responsible for meeting the needs of disabled children. It is the local authority who must bring in any other public authorities or agencies that are needed to help your child. If your child has particularly severe or complex needs they may be eligible for NHS Continuing Care Funding – in these cases it is the NHS who is responsible for meeting your child's needs.

Regardless of who is responsible for meeting your child's needs, the law is clear that all agencies have a legal duty to work closely together to get the best for your child.

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Planning

1. Local Authorities must look after disabled children

The law says that every local authority has "a duty to safeguard and promote the welfare of children within their area who are in need, by providing a range and level of services appropriate to those children's needs".

Children Act 1989 – section 17 (1)

Is my child 'in need'?

Your child does not need to have a diagnosis. Any child who meets the criteria for disability is 'in need'. This includes:

- Blind
- Unable to speak
- Is substantially and permanently handicapped by illness, injury or congenital deformity
- Deaf
- Has a mental disorder of any kind
- Any other disability that may effect the opportunity of achieving or maintaining a reasonable standard of health or development, including physical, intellectual, emotional, social or behavioral development

Children Act 1989 – section 17 (11)

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2. The NHS and Social Services must work together

The law recognises that health and social services need to work together to achieve the best outcomes for disabled children – in law this is referred to as "securing and advancing the health and welfare" and "securing and promoting the welfare of children".

National Health Service Act 2006 – Section 82

3. Your child is entitled to an assessment of their needs

The law says that your local authority cannot refuse to carry out an assessment of your disabled child's needs. You may also hear this being called a 'needs assessment', a 'section 17 assessment' or a 'health and social care assessment'. If you are unsure what assessment your child is having then don't be afraid to ask.

The Children Act 1989 – Para 1 (1), Schedule 2

You are also entitled to request an education, health and care (EHC) needs assessment if your child needs more support than a mainstream school, college or nursery can offer. This assessment is separate from the assessment of needs and other assessments that your child's school or doctors may carry out. An EHC needs assessment is specifically designed to identify what needs your child has in their school, college or nursery. Following the EHC needs assessment the local authority may decide to issue an EHC plan for your child. This plan can cover many different things including which school your child should attend, what type of support they need in school and what equipment they require to meet their education, health or care needs, so that they are able to learn.

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Your child is legally entitled to receive the support, equipment and services detailed in their EHC Plan.

Children and Families Act, 2014



4. You must be involved in the assessment of your child's needs.

The local authority carrying out your child's assessment has a duty to find out about your wishes and feelings and those of your child and take them into account. The purpose of the assessment is to find out what your child needs to improve their quality of life. The decisions taken about what should be provided for your child must be in their best interests and informed by the evidence available.

How does a needs assessment work?

1. Self refer (by contacting social services or the children with disabilities team at your local council) or ask your GP, Health Visitor or other professional to make the referral on your behalf.

2. The assessment must be carried out no longer than 45 days from the point of referral.

3. You and your child must be involved in the assessment and kept informed about the decisions that are being made.

4. The assessment will be carried out by a social worker. They should make it clear to you and your child what the assessment is looking for and they must share the results of the assessment and the plan they make with you.

5. If you have other professionals involved with your child and/or family they must have the chance to contribute to the assessment too.

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Local authorities must also follow their responsibilities under another law – the Chronically Sick and Disabled Persons Act, 1970 (CSDPA) which covers:

- Practical assistance for your child at home
- Provision of recreational, educational facilities
- Travel provision
- Home adaptation
- Meals and special equipment

5. The application process for funding must not put obstacles in the way of families trying to get help for their children.

Local authorities have criteria to decide who can get funding for equipment, services or adaptations, however this process (and the decisions made) must be fair, transparent and reasonable. The following factors must also apply:

Statutory Guidance, Working Together to Safeguard Children, March 2014

- The panel making decisions for the assessment must be sufficiently qualified to decide and act within the law
- If there is only one resource, product or service that will meet a child's needs, once eligible for provision and a need is identified, the local authority should provide it
- Once a need is identified the local authority must meet it by law
- A lack of funding or resources or a preference for an alternative solution are not justifications for leaving a need unmet

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Who can help me?

The basis for this document was provided by barristers advice published alongside Newlife's 2018 four-point-plan. For a full copy of the barristers advice in England, Scotland, Wales and Northern Ireland, please visit the website: www.newlifecharity.co.uk

For further information on EHC plans see the Contact website: www.bit.ly/contact-ehc-needs

What should I do if my child is not getting the help they are entitled to?

To make a complaint if you think your child is not receiving the help they are entitled to you should follow the complaints policy of your local authority. If the local authority fails to consider or resolve the matter, then the Local Government Ombudsman has the power to deal with the complaint.

Call 0300 061 0614 or visit www.lgo.org.uk for further information or support.

The NHS must deal with complaints you make about their services – they must also support you in making your complaint if you ask them to. If the NHS are unable to resolve a complaint made to them, it can be referred to the Parliamentary and Health Service Ombudsman.

Call 0345 015 4033 or visit www.ombudsman.org.uk for further information or support.

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